IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1360 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DY SECRETARY TO GOVT OF GUJ

Versus

MAHIPATSINH J JADEJA

Appearance:

1. Special Civil Application No. 1360 of 1988

MR L.R.POOJARI, AGP Petitioner No. 1-2

NOTICE SERVED on Respondent workman

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 28/08/2003

ORAL JUDGEMENT

1. In this petition preferred under Article 227 of the Constitution of India, the Deputy Secretary of the Forest & Environment Department and the Deputy

Conservator of Forests (Extension), Jamnagar, have challenged the order of the Labour Court, Rajkot dated 1-10-1986 in an award made in Reference (LCR) No.19 of 1984, by which the respondent employee was directed to be reinstated in service in his original position.

2. The Labour Court, on the basis of the material on record, came to a finding of fact that the respondent employee was working in a nursery of the forest department on a monthly salary of Rs.240=00 and his service was terminated without notice on 3-4-1982. On the basis of oral and documentary evidence on record, the Labour Court, in paragraph 5 of its award, taking note of the deposition of the department's officer that the respondent was a daily wager, and not a permanent servant, working as a labourer in the nursery where he was watering the plants and doing other work, and, his admission that he had served for more than a year during his tenure and used to remain present for 20 - 25 days in a month, held that it was clearly established that the respondent employee had worked for more than 240 days in a year. This is a finding of fact which does not call for any interference in exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution. The finding is based on the material which was on record before the Labour Court and is not at all coloured by any extraneous factor, nor is any relevant material ignored, while coming to the said conclusion. It appears from the pleadings that the appellant had acquiesced into the jurisdiction of the Labour Court and even in the petition, it is not challenged on the ground that the work of raising a nursery was a sovereign function.

3. The learned Assistant Government Pleader submitted that the respondent has been reinstated pursuant to the award and even the backwages were paid due to the interim orders made by the Court. A long period of nearly sixteen years has lapsed after the making of the award under which the respondent is reinstated in his original position and his backwages are already paid. Therefore, this would not be a proper case where this Court should exercise its discretionary jurisdiction on the ground that the forest department is not an `industry'.

3.1 The learned Assistant Government Pleader placed reliance on the decision of the Supreme Court in State of Gujarat v. Pratamsingh Narsinh Parmar, reported in JT 2001(3) SC 326, in which it was held that if a dispute arises as to whether a particular establishment or part

of it wherein an appointment has been made is an industry or not, it would be for the person concerned who claims the same to be an industry, to give positive facts for coming to the conclusion that it constitutes an "industry".

4. In the present case, admittedly, no dispute was raised by the petitioners that raising of a nursery was a sovereign function of the State or that such activity of the forest department was not an industry. In the case before the Supreme Court, as observed in paragraph 5 of the judgement, there was a specific plea raised by the State in the writ petition taking up a positive stand that the forest department cannot be held to be an industry. That was a case where the appointment to the posts of clerk, typist etc. was involved. In the present case, no dispute whatsoever was raised before the Labour Court on the question as to whether running of a nursery by the State Government in the forest department was not an industry and therefore, the Labour Court had no occasion to decide such a point. As noted above, even in the memo of the petition, no such contention is raised.

5. In view of the peculiar facts of this case as noticed above, there is absolutely no warrant for interfering with the impugned award of the Labour Court directing reinstatement of the respondent employee in his original position and backwages, especially in view of the fact that he has already been reinstated pursuant to the award made sixteen years back and has been paid backwages, precluding any scope for exercise of discretionary jurisdiction on the basis of a point which was never raised before the Labour court or even in the present petition. The petition is, therefore, rejected without going into the question sought to be raised for the first time that the nursery maintained by the forest department was or not an industry. Rule is therefore discharged with no order as to costs.

[R.K.ABICHANDANI, J.]

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